

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 9, 2004

IN RE:

PETITION OF ON-SITE SYSTEMS, INC.
TO AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY

DOCKET NO.
03-00329

ORDER GRANTING PETITION TO INTERVENE

This matter is before the Hearing Officer on the *Petition to Intervene* ("Petition") filed by IRM Utility, Inc. ("IRM").

I. Background

IRM filed the *Petition* on July 2, 2004. Tennessee Wastewater Systems, Inc. ("Tennessee Wastewater") filed its *Objection to Petition to Intervene Filed by IRM Utility, Inc.* ("Objection") on July 8, 2004.

II. Issues Presented for Decision

Whether IRM's legal rights, duties, privileges, immunities or other legal interests may be determined in this docket. If IRM's legal rights, duties, privileges, immunities or other legal interests may be determined in this docket, whether allowing IRM to intervene will impair the interest of justice or the orderly and prompt conduct of this docket.

III. Positions of the Parties

a. IRM

The *Petition* avers that IRM is a public utility operating in Sevier County and providing wastewater treatment services in Sevier County. The *Petition* avers that IRM intends to expand

its service in Sevier County as it receives requests to do so. IRM does not request that the hearing in this docket presently set for July 13, 2004 be continued.

b. Tennessee Wastewater

In its *Objection* Tennessee Wastewater states that IRM should not be allowed to intervene in this docket "at such a late stage in the proceeding" and that "IRM has no pending application before the Authority to provide sewer service in any other location in Sevier County. Therefore, the legal rights and interest of IRM Utility, Inc. will not be affected or determined by the outcome of this proceeding."¹

IV. Discussion and Analysis

TRA Rule 1220-1-2-.08(2) provides, "A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts."

The *Objection* states that the *Petition* should have been filed no later than July 1, 2004 and that the July 2, 2004 filing will impair the orderly and prompt conduct of this proceeding. Here the *Objection* seeks to impose a different deadline for filing petitions to intervene than is required by the TRA's rule which allows such petitions to be filed seven or more days prior to a contested case hearing.²

The *Objection* also states that because IRM has no pending application before the Authority to provide sewer service in Sevier County in the proposed service area at issue in this docket, IRM's legal rights and interests will not be affected or determined by the outcome of this

¹ *Objection*, pp. 1-2 (July 8, 2004).

² See TRA Rule 1220-1-2- 08(3)

proceeding.³ Here the *Objection* seeks to impose a different standard for intervention than is required by the TRA rule which permits intervention where a petitioner demonstrates, prior to a hearing on the merits, that the petitioner's legal rights, duties, privileges, immunities or other legal interests *may* be determined in the proceeding. If a petitioner meets this burden, it is inappropriate to consider the issue of whether a petitioner's legal rights, duties, privileges, immunities or other legal interests *will* be determined in the proceeding prior to the hearing on the merits. To engage in such a practice would have the effect of having a separate contested case, on the merits, via motion, for each petitioner seeking intervention in a contested case proceeding. Such a procedure is not required or appropriate. IRM has stated, for example, that it intends to expand its service in Sevier County as it receives requests to do so. The Hearing Officer finds that IRM's averment demonstrates that its legal interests may be determined in this proceeding.

Upon review of the *Petition* the Hearing Officer finds that IRM has demonstrated that its legal rights, duties, privileges, immunities or other legal interests may be determined in this docket. The Hearing Officer finds that the *Petition* was filed at least seven (7) days prior to the hearing presently scheduled for July 13, 2004. The Hearing Officer finds that IRM has not requested a continuance and that allowing IRM to intervene will not impair the interest of justice or the orderly and prompt conduct of this docket.

V. Conclusion

Based on the foregoing discussion and analysis the *Petition* should be granted.

³ Objection, pp. 1-2 (July 8, 2004).

IT IS THEREFORE ORDERED THAT:

1. The *Petition to Intervene* filed by Integrated Resources Management Utility, Inc. on July 2, 2004 is granted. Integrated Resources Management Utility, Inc. is granted leave to intervene and receive copies of any notices, orders or other documents in this matter.

2. The *Objection to Petition to Intervene Filed by IRM Utility, Inc* filed by Tennessee Wastewater Systems, Inc. on July 8, 2004 is denied.

A handwritten signature in black ink, appearing to read 'Randal L. Gilliam', is written over a horizontal line.

RANDAL L. GILLIAM
AS HEARING OFFICER